

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

HENRY EARL MILLER, #10909-171

PETITIONER

VS.

CIVIL ACTION NO. 3:14CV354TSL-JCG

S. FISHER, WARDEN

RESPONDENT

ORDER

This cause is before the court on the objections of petitioner Henry Earl Miller to the report and recommendation entered by United States Magistrate Judge John C. Garguilo on November 12, 2014. Having reviewed petitioner's submission, the court now concludes that petitioner's objections are without merit and hereby adopts, as its own opinion, the magistrate judge's report and recommendation.

Based on the foregoing, it is ordered that the report and recommendation of United States Magistrate Judge John C. Garguilo entered on or about November 12, 2014, be, and the same is hereby, adopted as the finding of this court. Accordingly, Miller's § 2241 petition is dismissed without prejudice.¹

¹ To be clear, the petition is dismissed without prejudice for lack of jurisdiction because a challenge to Miller's conviction and sentence which does not fall within the savings clause must be filed as a § 2255 motion in the district of his conviction (the District Court of South Carolina) and not as a § 2241 petition in this district. See Reed v. Young, 471 Fed. Appx 284 (5th Cir. 2012) (concluding that Reed's § 2241 petition, filed in district of incarceration, which challenged conviction but did not satisfy savings clause was properly regarded as § 2255 motion over which district court did not have jurisdiction).

SO ORDERED this 3rd day of February, 2015.

/s/Tom S. Lee
UNITED STATES DISTRICT JUDGE